IN THE

Supreme Court of the United States.

DECEMBER TERM, 1899.

H. L. BEDFORD *et al.*
vs.
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK.
No. 444.

Petition for a writ of certiorari to require the Circuit Court of Appeals for the Sixth Circuit to certify to the Supreme Court of the United States the whole record in the above-entitled cause, for its review and determination, or in the event that such motion is not granted, for permission to file and use in this case the printed record used in the Circuit Court of Appeals, in addition to the certificate sent up by the said Circuit Court of Appeals.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners, H. L. Bedford and Lou M. Bedford, his wife, respectfully show to this honorable court as follows:

First.

That your petitioners are citizens of the State of Tennessee.

Second.

That in a cause now pending between your said petitioners and the Eastern Building and Loan Association of Syracuse, State of New York, in the Circuit Court of Appeals for the Sixth Circuit, upon an appeal from the Circuit Court of the United States for the Western District of Tennessee, the judges of the said Court of Appeals have certified to this honorable court certain questions or propositions of law for instructions thereon, together with a statement of the facts as a basis for such questions or propositions of law.

Third.

Your petitioners represent to this honorable court that, in order to do justice to them, the case should be determined upon the whole record, and upon all the facts in the case, for the following reasons, to wit:

The statement of facts contained in the certificate of the United States Circuit Court of Appeals, taken in connection with the questions of law propounded by it, as worded, is defective and misleading. Various important facts which appear in the printed record of this cause are omitted from the statement of facts in the certificate, and such omission and the language used in the questions of law might cause your honors to suppose certain facts to have existed, and to have been decided by the United States Circuit Court of Appeals, when such was not really the case. This omission of facts from the certificate, and the peculiar language used in some of the questions of law, as petitioners submit, give, or may

give, a wrong coloring to this case, and prevent the case, as it really is, from being heard by your honors. Petitioners respectfully submit to your honors that the questions of law propounded in said certificate should be answered as applicable to the real facts of this case, and not as applicable to facts which do not exist, and which your honors, from the peculiar language of some of the questions of law propounded, might erroneously suppose to have existed and to have been decided by the Circuit Court of Appeals. Petitioners submit that the United States Circuit Court of Appeals did not, in fact, decide that certain facts existed in this case, as will be apparent if the whole record is before your honors. The whole record should be before your honors in order to determine what the questions of law propounded really mean, and to prevent a wrongful interpretation of said questions, and any erroneous view of the facts upon which the said questions are based. Petitioners submit further to your honors that they are entitled to a hearing upon the real facts of this case, if the United States Circuit Court of Appeals should have decided these facts erroneously.

The statement of facts in the certificate shows that the Eastern Building and Loan Association, a New York corporation, prior to March 26, 1891, had a soliciting agent in Memphis, Tennessee, whose "duty it was to solicit persons to become members of the association, and to subscribe to its stock," and that such agent transmitted all applications for such membership or stock in said association by mail to the association in Syracuse,

New York, where they were accepted or rejected by the Board of Directors. That three months after the issuance of stock to a subscriber "he was by the by-laws of the association permitted to apply" for an advance or loan, which application was likewise forwarded through the soliciting agent to the association at Syracuse, accompanied with the certificate of stock and a statement of value of the property proposed to be mortgaged, and also accompanied with the recommendation of the "local board" in regard to the wisdom of the proposed loan. That H. L. Bedford, of Shelby County, Tennessee, in the manner indicated above, on January 2, 1891, applied for shares in the Eastern Building and Loan Association, and a certificate of shares was issued to him February 2, 1891, and sent to him through said soliciting agent. That on March 20, 1891, H. L. Bedford "made an application for a preference for an advance, which was forwarded through the same soliciting agent to Syracuse." No copy of this application appears in the certificate of the Circuit Court of Appeals, but it is stated therein that "this application was approved May 18, 1891, by the Board of Directors at Syracuse." The certificate then shows that H. L. Bedford "applied on June 20 for the loan in the letter following," giving a copy of the "application for an advance." The certificate shows that this letter of June 20 was accompanied by a mortgage of land in Shelby County, Tennessee, executed and acknowledged by Bedford and wife in said county and State, and which mortgage had been recorded. Only the defeasance clause of said mortgage was given, and the dates

of said mortgage and of its acknowledgments and recordation do not appear in the certificate. The certificate showed H. L. Bedford executed 78 notes, all dated "Bailey, Tennessee, May 1st, 1891," and all payable on their face "to the order of the Eastern Building and Loan Association at its office in Syracuse, New York."

The certificate stated that "the business of the association in Tennessee had been lawful down to March 26, 1891," when two acts were passed by the Legislature of the State of Tennessee, being chapters 2 and 122, in regard to foreign corporations. The association did not comply with the requirements of chapter 122 until August 11, 1893, and August 15, 1893, and never, in any manner, complied with its requirements of the Act Chapter 2.

The certificate stated there was "no evidence that the association solicited stock subscriptions after March 26, 1891," but that it did appear it "made several loans of the same kind, as the Bedford loan, upon stock already subscribed for after that date." The certificate showed that the Supreme Court of Tennessee had decided that notes and mortgages similar to the ones in question, made payable in Minnesota, were Minnesota contracts, but were, nevertheless, void in Tennessee.

The judges of the United States Circuit Court of Appeals then requested an answer to various questions.

The first and third questions are as follows:

(First Question).—Was the validity of the notes signed in Tennessee by the maker manually delivered by him to the soliciting agent of the association at Memphis, to

be transmitted to the association at Syracuse, for the acceptance of the association at that place, and payable at Syracuse, to be determined by the laws of Tennessee or of New York?

(Third Question).—May a State by its laws, forbidding the transaction of business within its borders, annul the contracts of its citizens, to be entered into and to be performed without the State, when those contracts are but the consummation of the inhibited business within the State, without an infraction of the Fourteenth Amendment to the Constitution of the United States?

Petitioners submit to your honors that the said first and third questions, as worded, are misleading. Your honors might infer, from the language of the same, that the United States Circuit Court of Appeals decided that certain facts existed in this case, which petitioners submit did not really exist, and which said Circuit Court of Appeals did not really decide had so existed. Petitioners submit that the truthfulness of their contention as to this matter is apparent from the facts of this case, as disclosed in the printed record thereof in the United States Circuit Court of Appeals.

Petitioners state to your honors that it might be erroneously inferred from that portion of the "first question," saying, "to be transmitted to the association at Syracuse for the acceptance of the association at that place," and from that portion of the "third question," saying, "the contracts of its citizens entered into and to be performed without the State," that in the opinion of

the United States Circuit Court of Appeals, the contracts in question in this suit were the result of propositions made by petitioner H. L. Bedford, which were accepted by the Eastern Building and Loan Association in New York, and that such contracts were thereby closed in New York. Petitioners state to your honors that as a matter of fact, as disclosed by the original printed record in this case, the contracts in question were closed in Tennessee by the execution of the notes and the mortgage in Tennessee, according to the propositions, terms, and requirements of the Eastern Building and Loan Association. After the execution of the notes and mortgage in Tennessee, no acceptance of the same in New York was necessary to complete said contracts. The words " for the acceptance of the association at that place," in the first question, mean simply that after the notes and mortgage had been executed in Tennessee, as required by the association, they were delivered to its agent in Tennessee, who sent them on to the association, his principal, in New York. In like manner, the words " entered into," in the third question, mean simply that a contract was entered into, and do not signify that it was entered into in New York.

If the petitioners be mistaken in putting this construction upon the language of said first and third questions, then they respectfully submit that the United States Circuit Court of Appeals decided the facts of the case erroneously, and petitioners most respectfully ask that the printed record of the cause be inspected by your honors, so that the real facts of this case can be known and acted upon.

Petitioners state to your honors that the questions of law propounded by the United States Circuit Court of Appeals do not purport to contain therein any statement of facts. The statement of facts in the certificate is given separately from the questions of law, and the latter are based upon the former. The United States Circuit Court of Appeals does not say in its statement of facts in the certificate that the contracts in question were closed by the acceptance in New York, by the association, of the notes and mortgage which had been executed in Tennessee, and that it should not be inferred from the language of the first and third questions of law that the contracts were closed in New York, when the statement of facts in said certificate did not so show, and when the facts as disclosed by the original printed record show, that the contracts were closed in Tennessee by the execution of the notes and mortgage therein, and the delivery of the same to the agent of the association in Tennessee, who merely sent them on to the association in New York.

Petitioners respectfully submit to your honors that in answering the first question propounded by the United States Circuit Court of Appeals, the validity of the notes and mortgage should be determined by the laws of Tennessee, and not by the laws of New York, and, in either event, whether the contracts were closed in Tennessee by the execution of the notes and mortgage therein, or were closed in New York by the acceptance of the notes and mortgage by the association, after they had arrived in that State. In either event the notes and mortgage, as will be apparent from an inspection of the printed record in this

case, as used in the Circuit Court of Appeals, were the result of and parts of an illegal business carried on in Tennessee by the Eastern Building and Loan Association, and said contracts were void, and unenforceable in Tennessee. Petitioners, however, submit to your honors that the violation of Tennessee law was plainer and more palpable, and the attempted evasion of it by the Eastern Building and Loan Association more glaring, when the contracts were actually made and closed in Tennessee, in response to the requirements of said association, by the execution of the notes and mortgage in said State, which were afterwards merely forwarded to New York, and when such contracts were parts of a general business admittedly carried on by said association within said State of Tennessee.

Petitioners represent to your honors that the statement of facts in the certificate is defective, that many important facts disclosed by the record do not appear in said statement of facts, and that their absence and the defective wording of the questions of law propounded to your honors, as hereinbefore pointed out, tend to give a wrongful impression as to the real facts of the case.

Petitioners will now call your honors' attention to different facts, which appear in said original record, and which do not appear in said certificate or the statement of facts therein.

First.—The said certificate stated that it appeared that the association, after March 26, 1891, "made several loans of the same kind as the Bedford loan, upon stock already subscribed for."

Said certificate failed to show that the bill filed herein

by the Eastern Building and Loan Association (see original printed record, pages 1–8) set forth the transactions "with H. L. Bedford, giving the dates of the same, and that said bill alleged (Record, p. 2) that said association, "at the times hereinafter mentioned, was lawfully doing business in the State of Tennessee;" thus admitting, judicially, it was carrying on business in Tennessee after the passage of the Tennessee acts, and its transactions were not isolated transactions.

A stipulation of counsel appears in the printed record at pages 112 to 115. None of the facts set forth in this stipulation appears in the certificate of the Circuit Court of Appeals. This stipulation of counsel showed the general character of the business transacted by the Eastern Building and Loan Association in Tennessee, and that all of the loan business of the association in Tennessee was transacted exactly as the transactions with H. L. Bedford had occurred.

It thus appeared from the admission in the bill before quoted, and from this stipulation of counsel, that the Eastern Building and Loan Association was carrying on a general loan business in Tennessee, and that the methods or forms adopted by it, in this business, were to demand notes payable in New York. The question presented in this case upon the facts, as they appear in the printed record, is this: Can a foreign company, forbidden by Tennessee law to carry on business within its borders without complying with the preliminary requirements of such law, carry on such business in Tennessee and refuse to comply with the requirements of such law, and

evade or disregard that law, by merely taking notes payable outside of Tennessee, or by having notes executed in Tennessee sent out of that State to be accepted by the association carrying on the illegal business in Tennessee?

The statement of facts, in the certificate, is defective, because it does not show the general character of the business carried on in Tennessee by the association, but merely says it appears that the association "made several loans of the same kind as the Bedford loan upon stock, already subscribed for, after that date, March 26th, 1891." The stipulation of counsel, before referred to (see printed record, pages 112 to 115), shows that in carrying on this general loan business the Eastern Building and Loan Association had made nine different loans in Shelby County, Tennessee, and had made other loans (how many not known) in other portions of Tennessee. Petitioners state to your honors that an inspection of the printed record and of the parts of it before referred to, will show that the Eastern Building and Loan Association did a general loan business in Tennessee after March 26th, 1891, loaning to any one holding stock therein. The only difference in the transactions of the association before and after the passage of the Tennessee act on March 26, 1891, is that it does not appear that the association solicited stock subscriptions in Tennessee after that date.

Second.—So far as loaning money was concerned, the certificate merely alludes to the fact that applications for loans were forwarded through the soliciting agent to the association at Syracuse. It might be inferred from

the certificate that the Eastern Building and Loan Association did nothing but receive applications for loans at Syracuse, New York, and that its agents in Tennessee did nothing as to loans except to forward to New York such applications as parties handed them.

As before shown, the claim on behalf of the Eastern Building and Loan Association (see stipulation of counsel in printed record, pages 112 to 115) is that no stock was sold in Tennessee after March 26, 1891. If this be true, the only business transacted thereafter in Tennessee by the association was loaning money, and the admission in the bill (printed record, page 2) that the association "was lawfully doing business in the State of Tennessee," was an admission that the association was in the business of loaning money in Tennessee after March 26, 1891. The stipulation of counsel (printed record, page 115) says: "The complainant furnished its agent in Shelby County, Tennessee, with printed blanks to be used in effecting loans and other transactions with parties in Tennessee." This fact was not mentioned in the certificate, nor the admission in the bill, nor the statements of the stipulation of counsel, showing a regular loan business had been carried on in Tennessee by the association after March 26, 1891. Petitioners submit all of these facts should be before your honors in answering the questions of law propounded. The said certificate spoke of the recommendation of "the Local Board" accompanying the application for loan, merely saying this recommendation was "in regard to the wisdom of the loan," and that it was the duty of such local board "to

advise the association at Syracuse concerning the value of the property offered and the character of the applicant."

A copy of the "Local Board Charter" of the local board in Shelby County, Tennessee, appears at page 87 of the printed record. This charter so granted by the Eastern Building and Loan Association expressly says: "Applications for loans will not be entertained at the Home Office unless first approved by the Local Board." Petitioners submit that the statement just quoted should be before your honors in the decision of the questions of law. It is not mentioned in the certificate. The Eastern Building and Loan Association had constituted the local board as well as the soliciting agent its agents in Tennessee to bring about and assist it in effecting loans in said State. The Eastern Building and Loan Association had expressly declared that it could not be approached except through its agents in Tennessee, and that their recommendation was absolutely necessary. These facts, which were not mentioned in the certificate, show that the present case is not one where a citizen of Tennessee writes directly to a citizen of another State, and a contract is effected thereby, outside of the State of Tennessee. In the present case, if any contract was made outside of Tennessee, which petitioners deny to be the fact, such contract was brought about and effected by the agents of the association in Tennessee, and never would have been made at all except through the instrumentality of such agents in Tennessee.

So far as H. L. Bedford was concerned, it appeared

from his evidence that he became acquainted with said association through its agent in Tennessee, and that such agent got up the business with him.

(See Bedford's answers 2, 4, 7, 10, 13, on pages 102, 104, 105, 106, of printed record.)

This evidence should be before your honors in answering the questions of law.

Petitioners respectfully submit that when the Eastern Building and Loan Association had its agents in Tennessee who assisted in bringing about and transacting the business of the association in Tennessee, and when such business is admitted by the association to have been carried on by it in Tennessee, that the Tennessee law forbidding such business cannot be evaded or disregarded by the transparent device of having notes executed in Tennessee made payable in New York. All of the evidence, as in the printed record, as to the way the business was carried on, should be before your honors, and not simply the meager statements of facts as contained in the certificate.

Third. The statement of the certificate that Bedford, on March 20, 1891, applied for an advance or loan, which was accompanied by the recommendation of the local board, and that this application was approved May 18, 1891, by the Board of Directors at Syracuse, is misleading. It might be inferred from the statement as made in the certificate that the Eastern Building and Loan Association in New York had received the application and recommendation prior to the passage of the

Tennessee Acts of March 26, 1891, and had closed the contract by the approval of May 18, 1891. Such was not the fact, as is shown plainly and distinctly by the printed record, and such record should be before the court

The recommendation of the local board mentioned in the certificate is the "Appraiser's Report," which appears on pages 82 and 83 of the printed record. The appraiser's report was appended to the application for loan. The application for loan appears on pages 79, 80, 81, 82 of the printed record. The application for loan was dated and sworn to by H. L. Bedford on March 20, 1891, and the appraiser's report (which is same as the recommendation of the local board) was sworn to in Shelby County, Tennessee, on May 5, 1891, thus showing no proposition was made to the association until after May 5, 1891.

The witness Pierce says the "application for loan and appraiser's report attached were received by the association on the 12th day of May, 1891, from H. B. Martin." (See printed record, page 49 [14].)

Fourth. The certificate gives only the defeasance clause of the mortgage, and does not give its date, or the dates of the acknowledgment or recordation. Neither does the certificate give the date when the notes were executed, merely showing the notes were dated May 1, 1891. All of these dates should be before the court, in answering the questions propounded. All of these dates appear in the printed record, which should be before the court.

A copy of the mortgage appears in the printed record at pages 27, 28, 29, 30. It was dated May 1, 1891, acknowledged June 18, 1891, and filed for record in the register's office June 20, 1891. The witness Pierce shows that the notes and mortgage, while dated May 1, 1891, were in fact executed at some time "between May 5th, 1891, and June 29th, 1891." This June 29 is evidently a misprint for June 20, when the mortgage was filed for record. (See printed record, page 52 [17].) These dates are all material upon the question of when and where the contracts were closed. It is evident that the contracts had been closed prior to the recordation of the mortgage, June 20, 1891, or was closed at that time.

Fifth. Petitioners state to your honors that the contracts evidenced by the notes and mortgage were actually closed in Tennessee by the execution of said notes and mortgage. They were executed in Tennessee in accordance with the previous requirements and propositions of the Eastern Building and Loan Association, and were not mere propositions from petitioners, which became contracts when they were sent on to Syracuse, N. Y., to the association at that place. Petitioners submit that the printed record will demonstrate the correctness of petitioner's assertions in this regard. The contract was not closed May 18, 1891, by the approval of the board of directors of the association in Syracuse, N. Y. The resolution passed May 18, 1891, by said board appears on page 88 of the printed record, but does not appear in the certificate. This resolution merely recited that the loan committee in Syracuse had reported that it reco.a-

mended a loan to H. L. Bedford of $4,600. The resolution of May 18, 1891, merely says: "On motion, report of committee was adopted." The report of said "Loan Committee" appears on pages 65, 66 of the printed record, but is not in the certificate. This report is too loose and indefinite to be the basis of any contract, and it does not purport to give the terms of any such contract. It merely recommends that a loan be made "subject to usual conditions and L. B. R." "L. B. R." means local board report. The resolution of May 18, 1891, was nothing but a statement that the association would thereafter make a loan to H. L. Bedford, "subject to the usual conditions or terms," and which conditions or terms were afterwards embodied in the notes and mortgage which the said association had drawn up and presented to Bedford for signature. The terms upon which the said association would make the loan to Bedford were first fixed when the notes and mortgage were drawn up, and the contract was closed when Bedford signed these papers.

The application for loan made by Bedford, dated March 20, 1891, and endorsed by the appraisers May 5, 1891, does not appear in the certificate, but it is in the printed record at pages 79, 80, 81, 82. It is a mere application for a loan of $4,600, for 6½ years; does not undertake to fix the terms of the proposed loan. It is manifest that such paper, taken in connection with the resolution of May 18, 1891, could not form a contract. Bedford in his application merely asked for a loan, and the resolution of May 18, 1891, merely adopted a recommendation of it, the terms not being fixed. The correct-

ness of this is made more manifest by an inspection of the mortgage, which appears in the printed record at pages 27-30.

The application for loan did not mention any notes, or where payable, or fix the terms of the mortgage proposed to be given. Neither were these terms fixed by the resolution of May 18, 1891. The terms were first fixed when the Eastern Building and Loan Association caused the notes and mortgages to be drawn up, and those terms were first agreed to by Bedford when he signed these papers. The printed record, pages 35 and 39 (Answers of Pierce 10, 11, and 18) shows the Eastern Building and Loan Association had its attorney draw up said notes and mortgage. The mortgage which was presented to Bedford for signature contained provisions for notes to be given, payable in New York, and provisions as to insurance, taxes, fines, penalties, forfeitures, &c., as to which no mention had been made in the application for loan. Bedford was required by the mortgage, as written, to agree to a sale of his property upon the slightest default as to insurance, taxes, or otherwise, when no mention of such matters whatever had been made in his application for loan. A comparison of the application for loan and the mortgage will demonstrate that the application did not fix the terms of the proposed mortgage, and that the resolution of May 18, 1891, could not have been the closing of any contract.

In addition to this, Bedford in his application asked for a loan of $4,600 for 6½ years. The printed record shows (but the certificate does not) while he asked for a

loan of $4,600 for 6½ years he only got $4,140, which was paid by draft dated July 8, 1891. (See printed record, page 85.) It cannot be claimed that Bedford in his application for a loan of $4,600 meant $4,600 less the deduction of the fixed premium of $460. The association by section 2 of article 15 of its by-laws was authorized to loan Bedford the full amount of his certificate of stock, or $4,600. This by-law appears in the printed record at page 77. It is not in the certificate, and it should be before your honors.

The bill filled by the Eastern Building and Loan Association (printed record, page 7) shows the first note given by H. L. Bedford fell due "the last Saturday of May, 1891." The unpaid notes were all produced, and are copied in the printed record at pages 89–96. The note last falling due falls due in October, 1897. The witness Pierce shows payment of the first note, falling due "the last Saturday of May, 1891." (See printed record, page 45 [7].)

The mortgage (see printed record, page 28) showed there were 78 notes given by Bedford, falling due monthly. Bedford asked for a loan of $4,600 for 6½ years. That period, from July 8, 1891, when he received the draft, would expire January 8, 1898. It is evident that no loan was made for 6½ years, in fact, and that therefore the Eastern Building and Loan Association did not on May 18, 1891, or at any time, assent to Bedford's proposition as contained in his application for a loan. The said association changed such terms as Bedford stated in such application, and Bedford assented to the changes

and closed the contract by executing the notes and mortgage, as written up for him to execute.

Petitioners represent unto your honors that an inspection of the printed record will show that the contracts evidenced by the notes and mortgage were closed by their execution in Tennessee.

The statement of facts as made in the certificate is not in conflict with this claim and contention of petitioners, but by the omission of the important facts hereinbefore mentioned, and the peculiar wording of the first and third questions of law propounded, your honors might erroneously conclude that the contracts had been closed in New York, and might perhaps, therefore, be governed by New York law. Petitioners respectfully insist that when the Eastern Building and Loan Association was carrying on a business in Tennessee, forbidden by the laws of that State, and in the course of such business takes notes and mortgage which were executed in said State, and the contracts were closed in said State, that such notes and mortgage are void, and that the laws of Tennessee must govern as to this matter, and not the laws of any foreign State.

Petitioners most respectfully ask that the facts upon which their contention as to the law are based be ascertained from the printed record of the cause, and not from any erroneous impression of what the United States States Circuit Court of Appeals decided, or from any erroneous decision of that court as to facts, if it made such decision.

Sixth. Petitioners state further that the said certificate

omits to mention various portions of the charter and by-laws of the Eastern Building and Loan Association, and omits to mention other evidence in the printed record, all of which are material and should be before your honors in the decision of the questions of law propounded.

Section 2 of article 15 of the by-laws (printed record, page 77) authorized the loaning of sums to a borrower in amounts equal to or greater than the stock held by him. Bedford's application for a loan of $4,600, in view of this section, was an application for $4,600—not any less sum—and the said association changed the terms proposed by Bedford when it only actually loaned him $4,140. If these terms were changed, the contract clearly was not concluded until the notes and mortgages were signed—in Tennessee.

Article 3 of the charter of the association and section 3 of article 1 of its by-laws (printed record, pages 55, 69) provide for the transacting of business outside of the State of New York. The said by-law says: "Branches or agencies may be located and business done in any part of the State of New York, or in any other State or Territory of the United States where no legal prohibition exists."

It thus appears that even under its own charter and by-laws the association was not authorized to transact business in Tennessee in face of the "legal prohibition" of the Tennessee laws.

Section 5 of article 16 of the by-laws provides for issuance of charters to local boards by the association

(printed record, page 78). The application for local board charter, or the charter of said local board in Shelby County, Tennessee, appears at page 87 of the printed record. It says: "Applications for loans will not be entertained at the home office, unless first approved by the Local Board." The printed record (page 86) shows a local Board did exist in Shelby County, Tennessee, and that officers were elected August 13, 1890. The witness Pierce (printed record, page 50 [15]) shows a local board had been chartered by the association in Shelby County, Tennessee, and that such local board appointed the appraisers who certified as to the value of Bedford's property.

All of the various portions of said charter and by-laws, and the evidence above referred to, should be before your honors, as all of the same bears directly upon the contracts in question and the construction to be given the same.

Article 17 of the charter of the association divides its funds into "the loan fund and the expense fund," and provides the loan fund could also be used to pay amounts due withdrawing shareholders. (Record, page 60.)

Section 3 of article 19 of the by-laws provides (printed record, page 73), "all loans made by this association shall be made upon satisfactory note and first mortgage secured on real estate," etc.

Section 1 of article 15 (printed record, page 77) provides "each shareholder for each share named in their certificate shall be entitled to a loan of $100 from the association, provided they shall first make application

for such loan upon a blank furnished by the association for that purpose, if the condition of the loan fund in the treasury shall warrant it."

The various sections of said charter and by-laws are not mentioned in the certificate, and should be before your honors. The said sections show that a stockholder in said Eastern Building and Loan Association had no vested right to a loan by being a stockholder. He could simply ask for a loan, and get it or not, as the association might choose.

Petitioners call the attention of your honors to the case of Illinois B. & L. Ass'n *v.* Walker, 42 S. W. Rep., 192, where the Supreme Court of Tennessee decided, where the facts were similar to those of the present case, that a stockholder had no fixed right to a loan—that such a stockholder "had merely acquired a status that would enable him to open negotiations for a loan," and that the loan was illegal when the corporation had not complied with the Tennessee acts of 1891.

Fourth.

Your petitioners most respectfully ask leave, in the event the motion herein to have the whole case certified for review and determination shall be denied, that they may be permitted to file ten copies of the printed record of the case, as used in the said Circuit Court of Appeals, for reference and use in the determination of the questions and propositions of law so certified, in addition to the statement of facts contained in the certificate of the judges of the said Circuit Court of Appeals; and the

reasons contained in paragraph No. 3 of this petition and the various subdivisions thereof, are assigned as reasons for this branch of this petition and the motion.

Petitioners respectfully represent unto your honors that there is no conflict between the statement of facts in the certificate and the facts as they appear in the printed record, but that the omission from the certificate of the many facts set forth in paragraph 3 and its various subdivisions, may give your honors a wrongful impression as to what the real facts of the case are. Petitioners most respectfully submit that the questions of law propounded should be answered as applicable to the real facts of this case, and that in order to accomplish this result the whole record should be before your honors. As to the filing of the ten printed copies of the record, petitioners state that only such number of copies can be procured from the clerk of the United States Circuit Court of Appeals at Cincinnati, and that it would work a hardship upon petitioners to have a record reprinted which is already in print. Especially is this true when the case is before your honors upon the request of the judges of the Circuit Court of Appeals for your honors' instructions to them, and when it becomes necessary that your honors see the whole record in order to give instructions applicable to the real case and facts at issue. Petitioners submit herewith a stipulation or agreement of counsel as to the proposed use of said printed record, and make said agreement a part of this petition as Exhibit "A" thereto.

Fifth.

Petitioners submit herewith a copy of the printed record as used in said Circuit Court of Appeals, and make the same a part of this application.

Therefore your petitioners respectfully pray that a writ of certiorari may be issued out of and under the seal of this honorable court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding said court to certify and send to this court on a day certain to be therein designated a full and complete transcript of the record of all proceedings of said Circuit Court of Appeals therein, and of said case entitled H. M. Bedford and Lou M. Bedford, his wife, *v.* Eastern Building and Loan Association of Syracuse, N. Y., to the end that said case may be reviewed and determined by this court as provided in section 6 of the act of Congress entitled "An act to establish Circuit Courts of Appeal and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, and that your petitioners may have such other and further relief or remedy in the premises as to this court may seem proper, and that they may, in the event the prayer to this petition to bring up the whole case shall be denied, be permitted to file and use the printed copies of the record of the said Circuit Court of Appeals, as prayed for in the fourth paragraph of the petition.

Petitioners state that the title of the cause in the Circuit Court of Appeals, as given in said printed record,

is "H. M. Bedford and Lou M. Bedford, his wife, *v.* Eastern Building and Loan Association of Syracuse, N. Y." The initials of the petitioner H. L. Bedford are given as "H. M. Bedford," by mistake, but the case in the printed record is the one that the petitioners have mentioned and referred to as being the litigation between said association and petitioners.

And your petitioners will ever pray, etc.

HEBER J. MAY,
R. M. HEATH,
W. C. MCLEAN,
Attorneys for Petitioners.

I, H. L. Bedford, one of the petitioners in the foregoing and hereto annexed petition, do swear that the facts stated therein are true, so help me God. I further swear that I am the party referred to in the title to said cause in which said petition is filed as H. M. Bedford, the initials of my name having by mistake been given as "H. M." instead of H. L. Bedford.

H. L. BEDFORD.

Subscribed and sworn to before me at Memphis, Tennessee, on this 24th day of November, A. D. 1899, by the said H. L. Bedford.

JOHN B. CLOUGH,
[SEAL OF COURT.] *Clerk of said U. S. Circuit Court, at said Memphis.*

I, ——— ———, attorney for the petitioners above named, have carefully examined the foregoing petition,

and all the facts in connection with said cause, and in my opinion the said petition is well founded and meritorious.

HEBER J. MAY.
R. M. HEATH.
W. C. MCLEAN.

MOTION.

H. M. BEDFORD AND LOU M. BEDFORD, HIS WIFE,
vs.
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y. } No. —.

And now comes H. L. Bedford, being the party called H. M. Bedford in the title to above cause, and Lou M. Bedford, his wife, and move this honorable court for a writ of certiorari, or other proper process, directed to the Honorable Judges of the Circuit Court of Appeals for the Sixth Circuit, requiring said court to certify to this court for its review and determination a certain cause now pending in said Circuit Court of Appeals, in which that court has certified to this Honorable Court certain questions or propositions of law, the said cause being entitled, H. M. Bedford and Lou M. Bedford, his wife, appellants, *v.* Eastern Building and Loan Association, of Syracuse, N. Y., appellees; and for the purposes of this motion the movers tender herewith their petition, together with a copy of the record in said cause in the said Circuit Court of Appeals. And in the event this motion to certify the whole case to the Supreme Court of the United States shall be denied, it is hereby moved

that we may be given leave to file ten copies of the printed record of the Circuit Court of Appeals for reference and use in determining the questions and propositions of law so certified, for the reasons stated in the petition.

HEBER J. MAY,
R. M. HEATH,
Attorneys for Bedford.

H. M. BEDFORD AND LOU M. BEDFORD, HIS WIFE,
vs.
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y. } No.—

To BUCHANAN & MINOR,
Attorneys for Eastern Building and Loan Association of Syracuse, N. Y.

(The firm of Buchanan & Minor was composed of H. D. Minor and J. W. Buchanan.)

Notice is hereby given that upon the petition of H. L. Bedford and wife, Lou M. Bedford, appellees in the above-entitled cause, verified by H. L. Bedford, a copy of which petition is herewith served upon you, and upon all the pleadings and proceedings therein, we shall, on Monday, the 18th day of December, 1899, at the opening of court on that day, or as soon thereafter as counsel can be heard, submit a motion, a copy of which is herewith served upon you, to the Supreme Court of the

United States, at the Supreme Court Room, at the Capitol, in the City of Washington, D. C.

H. L. BEDFORD,
LOU M. BEDFORD,
Petitioners.

HEBER J. MAY,
R. M. HEATH,
W. C. McLEAN,
Attorneys.

Service of the foregoing notice is hereby admitted, and a copy thereof, and a copy of the petition and motions therein mentioned, received this 24th day of November, A. D. 1899.

H. D. MINOR, and
J. W. BUCHANAN,
Attorneys for Eastern Building and Loan Association.

EXHIBIT "A."

Stipulation or Agreement of Counsel.

We have received a notice that motion will be made on behalf of H. L. Bedford and wife, Lou M. Bedford, before the Supreme Court of the United States at Washington, D. C., that the original record in the cause styled H. M. Bedford and Lou M. Bedford, his wife, *v.* Eastern Building and Loan Association of Syracuse, N. Y., pending in the United States Circuit Court of Appeals for the Sixth Circuit, be sent up to said Supreme Court of the United States for review, and that in any event ten printed copies of such original record should be used

before and by said Supreme Court of the United States, in addition to the certificate sent it by said Circuit Court of Appeals. We hereby agree that if the Supreme Court of the United States should decide that such record should be sent up to it for review, or should decide that said original record can be used before and by it for any purpose, that then ten copies of such printed record, being the same that were printed for use in said Circuit Court of Appeals, or any less number of such printed copies, may be used in said Supreme Court of the United States. We waive the necessity of any copies of such printed record being furnished to the Eastern Building and Loan Association or its counsel, as they already have copies of such printed record. We also agree that upon the pre-sentation of said motion to the Supreme Court of the United States, that the copy of the printed record in said cause, as used in the Circuit Court of Appeals, which Mr. Heber J. May of Washington, D. C., has in his possession, may be used by him for the purposes of said motion, and we waive the necessity of such printed copy being certified.

We agree to the foregoing, providing the rules and practice of the Supreme Court of the United States permit us to make the waiver as stated, but nothing in this stipulation is to be taken as a waiver of objections to the motion mentioned.

H. D. Minor and
J. W. Buchanan,
Attorneys for Eastern
Building and Loan Association.

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Office Supreme Court
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No. 153.

Br. of May for Bedford et al.

Filed Nov. 19, 1900.

SUPREME COURT OF THE UNITED STATES.

October Term, 1900.

No. 153.

H. L. BEDFORD AND LOU M. BEDFORD, His Wife,

vs.

THE EASTERN BUILDING AND LOAN ASSOCIATION, of Syracuse, New York.

BRIEF

For H. L. Bedford and wife, Lou M. Bedford.

Heber J. May,
Robert M. Heath,
W. C. McLean,
Attorneys for Bedford and Wife.

POOR COPY

DARK PAGE BLEED THRU

SUPREME COURT OF THE UNITED STATES.

October Term, 1900.

H. L. BEDFORD AND LOU M. BEDFORD

vs.

THE EASTERN BUILDING AND LOAN ASSOCIATION, of Syracuse, N. Y.

No. 153.

STATEMENT OF CASE AND BRIEF ON BEHALF OF H. L. BEDFORD AND WIFE, LOU M. BEDFORD.

STATEMENT OF FACTS.

This case came before this Court originally upon a certificate from the United States Circuit Court of Appeals for the Sixth Circuit, asking the decision of four questions of law. Conceiving that the statement of facts as contained in said certificate may not be quite full enough for a thorough understanding of the questions submitted as applicable to this case, Bedford and wife asked for the full record in the case which has been transmitted to this Court and is now before it for its consideration. There is no conflict of evidence, and the facts are undisputed. There is no contradiction or conflict between the statement of facts as contained in the certificate and the facts as shown in the record, but the questions of law submitted, as raised in this case, will be better understood by the fuller statement from the record.

The Eastern Building and Loan Association, of Syracuse, N. Y., is a corporation organized under the laws of the State of New York, which was doing business in Shelby County, Tennessee, and at other points in said State. H. L. Bedford, a resident of Shelby County, Tennessee, in said county, executed certain notes to said association, dated May 1, 1891, and payable on their face in Syracuse, N. Y. These notes were secured by a mortgage upon lands situated in Shelby County, Tennessee, executed by Bedford and wife in said county. The mortgage was dated May 1, 1891, was acknowledged June 18, 1891, and was registered June 20, 1891.

Record, pp. 22-25.

The Eastern Building and Loan Association on June 24, 1895, filed its bill in the United States Court at Memphis, Tennessee, to foreclose said mortgage, a number of said notes being unpaid. This bill (Record, p. 1) mentioned the different dates of the different transactions in which H. L. Bedford was concerned, and alleged that said corporation, "at the times hereinafter mentioned, was lawfully doing business in the State of Tennessee." The facts are as follows:

On January 2, 1891 (Record, pp. 51-52), H. L. Bedford applied for forty-six shares in the Eastern Building and Loan Association. On February 2, 1891, the certificate of stock in said association for forty-six shares (Record, p. 53) was issued to H. L. Bedford. An application for a loan from said association was made by H. L. Bedford (Record, pp. 63-66), the same being made in Shelby County, Tennessee, and being dated March 20, 1891. On the back of this application is the "appraisers' report" of the value of the real estate offered as security, executed and sworn to by said appraisers in Shelby County, Tennessee, on May 5, 1891. (Record, pp. 66-67.)

The notes and mortgage were not executed until after this appraisers' report of May 5, 1891. (Record, p. 42) (17). On the back of the application and appraisers' report is marked "approved May 18, 1891. (Record, p. 67.) While the application for loan bears date March 20, 1891, D. A. Pierce, the witness for the Eastern Building and Loan Association (Record, p. 27) (8) says "it was made on or prior to May 5, 1891." The same witness (Record, p. 40) (14) says: "Said application for loan and appraisers' report attached were received by the association on the 12th day of May, 1891, by mail from H. B. Martin," said Martin being the agent of said association in Shelby County, Tennessee. The "loan committee," composed of A. H. Hubbs (Record, pp. 52-53) then approved the loan asked for and recommended that it be granted "subject to usual conditions and L. B. R." The letters "L. B. R." meant "Local Board Report." This "loan committee" was at the home office of the association in New York. (Record, pp. 31 (18), 40 (14.)

The Eastern Building and Loan Association then, by entry in its minutes (Record, p. 70) adopted the report of such "loan committee" May 18, 1891. The application for loan (Record, pp. 63-66) merely described the property which H. L. Bedford offered to mortgage. No terms whatever were fixed by this application, except that it was "for loan of forty-six hundred ($4,600) dollars for six and a half years, to bear interest at the rate of 5 per cent. per annum and a premium of 5 per cent. per annum, payable on or before the last Saturday of each month, all payments to be paid at such place as the lender may direct, and to secure the same ———— agree to give a mortgage on

the real estate set forth in the following questions and answers." The Eastern Building and Loan Association did not assent to making any loan until May 18, 1891, and did not then specify the terms thereof. When these terms were made known to H. L. Bedford in Tennessee they were for him to execute seventy-eight notes, dated May 1, 1891, the first note due the last Saturday of May, 1891, and the last note due the last Saturday of October, 1897. The mortgage (Record, p. 23) shows the notes were seventy-eight in number of date May 1, 1891, one note falling due "the last Saturday of each and every month." The bill (Record, p. 2) shows the first note was due "the last Saturday of May, 1891." The answer (Record, p. 13) required "the production of these notes." The unpaid notes were produced (Record, pp. 71-77, and the note last falling due is in October, 1897. The witness Pierce (Record, p. 36 (7) shows payment of a note falling due "the last Saturday of May, 1891." A simple calculation shows seventy-eight notes due monthly, beginning May, 1891, would end in October, 1897. The statement of the bill (Record, p. 2) that the last note fell due in November, 1897, is clearly an error. The witness Pierce (Record, p. 30 (15) shows the money advanced to Bedford was by draft of date July 8, 1891, for $4,140. (Record, p. 68.) The mortgage (Record, pp. 22-25) contains numerous conditions which were not mentioned in Bedford's application and which terms were of course unknown to him until he was called on to execute the mortgage. The Eastern Building and Loan Association had this mortgage and the notes prepared. (Record, pp. 28-29, 31, 32) (10-11-18.) The mortgage contained provisions securing "fines and penalties," taxes, etc., which Bedford was ignorant of until he received the papers for signature. Bedford asked for a loan for six years and a half. That time from July 8, 1891, when the draft issued, would expire January 8, 1898. It is perfectly apparent that in requiring notes, the last of which fell due in October, 1897, when he got no money prior to July 8, 1891, that the Eastern Building and Loan Association did not close any contract May 18, 1891, when it assented to making a loan. It did not then agree to any proposition made by Bedford, but merely consented to making a loan, the terms of which were afterward fixed by it when it prepared the notes and mortgage and got Bedford to assent to them in Tennessee by signing them. The application for loan (Record, pp. 63-66) was for a loan of $4,600. Such application did not promise to pay a fixed premium of 10 per cent. to be taken out of such loan, and no reference was made to the charter or by-laws, which may have allowed such deduction. When the contract was closed in